

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated September 12, 2007 (hereinafter Office Action) have been considered, and reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

In an effort to facilitate prosecution and without acquiescing to characterizations of the asserted art, Applicant's claimed subject matter, or to the applications of the asserted art or combinations thereof to Applicant's claimed subject matter, Applicant has amended independent Claims 1, 5, 7 and 14 to indicate that a message is transmitted to a mobile station when a predetermined event occurs in a broadcasted program in order to provide the user of the mobile station with information about the event. Support for these changes may be found in the instant Specification, for example, in original Claims 2 and 8 and at paragraphs [0011], [0017], [0018], [0025], [0033] and [0034]; therefore, the changes do not introduce new matter. Each of the pending claims is believed to be patentable over the asserted reference for the reasons set forth below.

Applicant respectfully submits that the teachings of U.S. Patent No. 7,194,758 to Waki *et al.* (hereinafter "Waki") do not teach or suggest each of the claimed limitations. For example, Waki does not teach the claimed limitations directed to transmission of a message to a mobile station when a predetermined event occurs in a broadcasted television program. In contrast, the cited portions of Waki at column thirty-four teach that the host station calls the operating device (asserted as corresponding to the claimed mobile station) to provide the start time for a program and/or key information for descrambling a fee-based program. Both the start time and a descrambling key for a program are transmitted prior to the broadcasting of the program and therefore the sending thereof cannot correspond to a transmission when a predetermined event occurs in a broadcasted television program. Moreover neither the start time nor the descrambling key is a message including information for generating control signals to control a TV apparatus or a mobile station to provide a user with information about the predetermined event, as claimed. As Waki does not teach or suggest providing a user with information about an event in a broadcasted program, Waki fails to correspond to each of the claimed limitations. Therefore, the

§ 102(e) rejection cannot be maintained, and Applicant accordingly requests that the § 102(e) rejection be withdrawn.

Dependent Claims 3, 4, 6, 9-11 and 12 depend from independent Claims 1, 5 and 7, respectively, and also stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Waki. While Applicant does not acquiesce with the particular rejections to these dependent claims, these rejections are also improper for the reasons discussed above in connection with the independent claims. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited reference. Therefore, the rejection of dependent Claims 3, 4, 6, 9-11 and 12 is improper.

With respect to the § 103(a) rejection based upon a modification of Waki, Applicant further submits that the asserted teachings alone, or as modified, do not teach or suggest each of the claimed limitations. As discussed above, Waki does not teach or suggest at least the limitations directed to transmission of a message to a mobile station when a predetermined event occurs in a broadcasted television program. As the asserted modification of Waki would not overcome at least these deficiencies in the teachings of Waki, the asserted modification also would not correspond to the claimed invention.

Applicant further traverses the assertion of Official Notice that a network element such as a host station would obviously contain a list of different TV apparatus models and information for defining control signals for controlling each model. First, the Examiner has not provided any evidence in support of this assertion and instead appears to be impermissibly asserting that Waki constitutes facts outside of the record which are capable of instant and unquestionable demonstration as being well known or obvious to one skilled in the art. Applicant notes that allegations concerning specific knowledge of the prior art...should be supported and the applicant should be given the opportunity to challenge the correctness of such assertions and allegations. The facts so noticed serve to “fill the gaps” which might exist in the evidentiary showing and should not comprise the principle evidence upon which a rejection is based. MPEP § 2144.03, citing *In re Ahlert* 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970). The taking of Official Notice is

traversed, and in accordance with MPEP § 2144.03, Applicant requests that the Examiner provide a reference in support of the assertion that it is well known for a network element such as a host station to contain a list of different TV apparatus models and information for defining control signals for controlling each model, and that list would be combined with the asserted teachings of Waki to provide each of the limitations of Claims 13 and 15. The unsupported assertion of "Official Notice" does not overcome the above-discussed deficiencies of Waki and does not provide any evidence that such asserted facts would be combined with the teachings of Waki. Thus, the asserted teachings do not, alone or as modified, correspond to the claimed invention, and the rejection should be withdrawn.

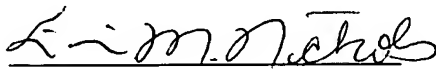
It should also be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.072PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC
8009 34th Avenue South, Suite 125
Minneapolis, MN 55425
952.854.2700

Date: January 11, 2008

By: 

Erin M. Nichols
Reg. No. 57,125